Filed 12/12/16 Marriage of Armstrong CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re Marriage of BRIAN and MARIA ARMSTRONG.	B267119 (Los Angeles County Super. Ct. No. ED038656)
BRIAN WAYNE ARMSTRONG, Appellant, v. MARIA ALBERTINA ARMSTRONG, Respondent.	

APPEAL from orders of the Superior Court of Los Angeles County, Ralph C. Hofer, Judge. Affirmed.

Brian Wayne Armstrong, in pro. per., for Appellant.

Holmes & Holmes and Robert K. Holmes for Respondent.

Brian Wayne Armstrong, representing himself, appeals from the trial court's postjudgment order reducing the monthly spousal support he pays to his former wife Maria Albertina Armstrong and the subsequent order denying his motion for reconsideration. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A stipulated judgment dissolving the Armstrongs' marriage was entered on April 6, 2012. The judgment required Brian[1] to pay Maria certain base levels of child and spousal support, as well as percentages of his earned income over a fixed amount. In an order dated January 11, 2013, the court modified the child and spousal support awards effective December 2012. Thereafter, Brian undertook his own representation. In June 2015 we affirmed the trial court's December 26, 2013 order assessing child and spousal support arrearages and attorney fees against Brian. (See *In re Marriage of Armstrong* (June 16, 2015, B254724) [nonpub. opn.] (*Armstrong I*).) In our opinion we noted Brian's request for an order modifying the terms of support had been denied because he had failed to pay the necessary filing fees. (*Id.* at p. 4.) Brian subsequently refiled his request for an order modifying the terms of support and also sought orders vacating the previously affirmed order assessing arrearages and attorney fees and sanctioning Maria's counsel. On February 28, 2014 the trial court denied the requested orders, and we again affirmed. (See *In re Marriage of Armstrong* (Nov. 12, 2015, B256039) [nonpub. opn.] (*Armstrong II*).)

On February 27, 2015 Brian filed a request for an order terminating his spousal support obligation on the grounds Maria was now self-supporting and his income had been sharply reduced because one of the television series that employed him

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[1] As is customary in family law matters, we refer to the parties by their first names for convenience and clarity.

had been cancelled. As with his previous requests, Brian failed to provide documentation supporting his assertions. Nonetheless, at the April 17, 2015 hearing on the request, Maria's counsel offered a completed DissoMaster report,[2] supported by the necessary documentation, establishing that Brian's monthly support obligation should be reduced from $1,754 to $326. When offset against Maria's $520 monthly child support payment to Brian (with whom their minor child principally resided), Brian would receive a monthly credit of $194, which Maria's counsel asked be applied to the outstanding support arrearages and attorney fees of more than $100,000 that Brian owed Maria. Based on Maria's stipulation to this revised schedule, the trial court ordered the resulting reduction in Brian's spousal support obligation but denied the request the $194 monthly payment be applied to the arrearages.[3] The court also advised Brian he was free to file a renewed request for an order terminating spousal support addressing the required findings under Family Code section 4320 and providing documentation for those findings.

Instead of filing a renewed request as suggested by the court, on June 2, 2015 Brian filed a motion for reconsideration or, in the alternative, a new trial or correction of clerical errors in the judgment. He asserted the DissoMaster report submitted by Maria's counsel had understated her monthly income by $104, had failed to include his monthly health insurance premium expense of $50 and was improperly based on program inputs for Santa Clara County rather than Los Angeles County.

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[2] DissoMaster is a computer software program widely used by courts and the family law bar for assistance in setting child and spousal support. (See *In re Marriage of Olson* (1993) 14 Cal.App.4th 1, 5, fn. 3; *In re Marriage of Zywiciel* (2000) 83 Cal.App.4th 1078, 1080.)

[3] The court also denied Brian's request that Maria pay an increased sum for child care.

In addition, Brian argued the court had failed to consider the garnishment of his wages and other expenses adversely affecting his standard of living when compared to Maria's.

At the July 21, 2015 hearing on the motion the trial court denied the motion for reconsideration on the grounds it was untimely and included no new facts that could not have been provided in the original request.

DISCUSSION

1. *Brian's February 27, 2015 Request for Order Failed To Meet the Standard for Modification of Spousal Support*

Family law courts retain jurisdiction to modify spousal support at any time even if the parties stipulated to the amount of support. (Fam. Code, § 3651, subds. (a) & (e).) However, "'[a] motion for modification of spousal support may only be granted if there has been a material change of circumstances since the last order. . . . Absent a change of circumstances, a motion for modification is nothing more than an impermissible collateral attack on a prior final order.'" (*In re Marriage of Khera & Sameer* (2012) 206 Cal.App.4th 1467, 1479, citations omitted; accord, *In re Marriage of West* (2007) 152 Cal.App.4th 240, 246.) "Whether a modification of a spousal support order is warranted depends upon the facts and circumstances of each case, and its propriety rests in the sound discretion of the trial court[,] the exercise of which this court will not disturb unless as a matter of law an abuse of discretion is shown." (*In re Marriage of Hoffmeister* (1987) 191 Cal.App.3d 351, 357-358.) "'Appellate review of orders modifying spousal support is governed by an abuse of discretion standard, and such an abuse occurs when a court modifies a support order without substantial evidence of a material change of circumstances.'" (*In re Marriage of Dietz* (2009) 176 Cal.App.4th 387, 398; accord, *West,* at p. 246 ["[a] spousal support order is modifiable only upon a material change of circumstances since the last order"; "'[w]here there is no

substantial evidence of a material change of circumstances, an order modifying a support order will be overturned for abuse of discretion'"].)

Brian's request for an order terminating spousal support did not satisfy the central requirement for modification of an existing spousal support order: He failed to provide any evidence whatsoever for the asserted changed circumstances. The denial of his request, therefore, was entirely proper,[4] and Brian was fortunate Maria stipulated to a substantial reduction in spousal support without requiring Brian's establishment of grounds for such relief.

The order is affirmed. (See *Armstrong II, supra,* at pp. 4-6 [explaining limits of appellate review of judicial orders].)

2. *The Trial Court Properly Denied the Motion for Reconsideration Under Section 1008, Subdivision (a); Even If Considered a Renewed Motion Under Section 1008, Subdivision (b), Brian Is Not Entitled to Relief*

Brian did not heed the trial court's suggestion he file a renewed request for an order terminating spousal support addressing the factors under Family Code section 4320 and providing the necessary evidence. Instead, he belatedly sought reconsideration of the court's order denying his defective request.

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[4] As we have twice explained to Brian, while we acknowledge a self-represented litigant's understanding of the rules on appeal is, as a practical matter, more limited than an experienced appellate attorney's and, whenever possible, will not strictly apply technical rules of procedure in a manner that deprives litigants of a hearing, we are required to apply the foregoing principles and substantive rules of law to a self-represented litigant's claims on appeal, just as we would to those litigants who are represented by trained legal counsel. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985; *In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 830.)

Code of Civil Procedure section 1008, subdivision (a),[5] allows a party to move for reconsideration of an order within 10 days after service on the party of written notice of the order and requires any motion for reconsideration be based "upon new or different facts, circumstances, or law." (See *Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1098; *Advanced Building Maintenance v. State Comp. Ins. Fund* (1996) 49 Cal.App.4th 1388, 1392.) Section 1008, subdivision (b), which allows a party whose earlier application for an order has been denied to make a renewed application for the same relief, has no time limitation but does require the renewed application be based "upon new or different facts, circumstances, or law." (See *Tate v. Wilburn* (2010) 184 Cal.App.4th 150, 160 ["[a] party filing either a motion under section 1008, subdivision (a) or (b) is seeking a new result in the trial court based upon 'new or different facts, circumstances, or law'"]; *Kerns v. CSE Ins. Group* (2003) 106 Cal.App.4th 368, 381 ["'[a]lthough the two subdivisions differ in certain minor details, each sets out the same essential requirements'"].)

Brian's motion, whether construed as a motion for reconsideration (as labeled) under section 1008, subdivision (a), or a renewed motion under section 1008, subdivision (b), was defective.[6] Even if new or different facts are provided with the renewed motion, the moving party must provide the trial court with a satisfactory explanation as to why he or she failed to

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[5] Statutory references are to this code unless otherwise stated.

[6] We need not reach the question whether the motion was timely (the trial court ruled it was not under section 1008, subdivision (a)) because the record does not indicate whether Maria's counsel served notice of the April 17, 2015 ruling as he was instructed to do. Brian, who was represented by counsel at the July 21, 2015 hearing, argued notice was defective.

produce the evidence at an earlier time. (See *Even Zohar Construction & Remodeling, Inc. v. Bellaire Townhouses, LLC* (2015) 61 Cal.4th 830, 839 ["courts have construed section 1008 to require a party filing an application for reconsideration or a renewed application to show diligence with a satisfactory explanation for not having presented the new or different information earlier"]; *People v. Safety National Casualty Corp.* (2010) 186 Cal.App.4th 959, 974 ["Facts of which a party seeking reconsideration was aware at the time of the original ruling are not 'new or different facts,' as would support a trial court's grant of reconsideration. [Citation.] To merit reconsideration, a party must also provide a satisfactory reason why it was unable to present its new evidence at the original hearing."].)

None of the evidence submitted by Brian in support of his motion for reconsideration was unavailable at the time he filed his February 27, 2015 request for an order terminating spousal support. To the extent, therefore, Brian sought reconsideration of the order denying his request under section 1008, subdivision (a), or subdivision (b), the court found Brian had not provided evidence of "new or different facts, circumstances, or law," as each of these subdivisions requires, a finding Brian has failed to rebut on appeal.[7]

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[7] Brian appears to have abandoned his arguments seeking a new trial, entry of a modified judgment or correction of clerical error. In any event, these arguments are meritless. (See § 1008, subd. (e) ["[n]o application to reconsider any order or for the renewal of a previous motion may be considered by any judge or court unless made according to this section"].)

DISPOSITION

The orders are affirmed. Maria is to recover her costs on appeal.

PERLUSS, P. J.

We concur:

ZELON, J.

SEGAL, J.